



**DEPARTMENT OF THE ARMY**  
**LOS ANGELES DISTRICT, CORPS OF ENGINEERS**  
**P.O BOX 532711**  
**LOS ANGELES, CALIFORNIA 90053-2325**

October 24, 1997

REPLY TO  
ATTENTION OF:

Office of the Chief  
Regulatory Branch

**DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION**

Harry W. Stone  
Director of Public Works  
Los Angeles County, Department of Public Works  
900 South Fremont Avenue  
Alhambra, California 91802-1460

Dear Mr. Stone:

I am replying to your letter (No. 98-00027-AOA to 98-00123-AOA) dated September 29, 1997, concerning our permit authority under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) over your proposal to impact 880.83 acres of waters of the United States for the removal of accumulated sediment, vegetation and debris from 95 flood control facilities in Los Angeles County, California (Table 1).

With the inclusion of some restrictions, as stipulated below, I have determined that your proposed activity complies with the terms and conditions of nationwide permit NW31 [Federal Register, December 13, 1996, pp.65874-65922] for discharges of dredged or fill material for the maintenance of existing flood control facilities (i.e., channels) that were (i) previously authorized by the Corps by individual permit, general permit, or by 33 CFR 330.3 and constructed or (ii) constructed by the Corps and transferred to a local sponsor for operation and maintenance. The authorized maintenance is limited to that approved in my reach-by-reach determination of a maintenance baseline.

In channel reaches with no vegetation, dominated by exotic species or containing less than one acre of jurisdictional waters of the United States, I have not required any compensatory mitigation measures. However, in order for the proposed project to result in minimal impacts to the aquatic environment pursuant to Section 404(e) of the Clean Water Act, I have required compensatory mitigation for channel reaches dominated by native riparian species, mulefat scrub, alluvial scrub and emergent marsh habitat. As stipulated under the terms and conditions of Nationwide Permit No. 31, I will accept after-the-fact mitigation measures to insure needed flood control maintenance is not delayed by this Section 404 authorization.

As part of a Section 404 application for Nationwide Permit No. 31, you are required to submit valid engineered drawings for all 95 flood control facilities. For approximately 14 of the channel reaches (Table 2), you did not provide engineered drawings for the given flood control facility. As a result, I could not verify whether the proposed maintenance activities meets the terms and conditions for authorization under Nationwide Permit No. 31 in these reaches. To insure that needed flood control maintenance activities are not delayed, I included the reaches without valid engineered drawings as part of this authorization; however, you must provide engineered drawings for each of the reaches without

drawings for our review and approval before any maintenance activities can be initiated in these reaches. Once we have reviewed the engineered drawings, maintenance activities could then be immediately initiated in these reaches (Table 2).

As part of your application, you requested authorization under Nationwide Permit No. 31 to clear vegetation and sediment in several sections of the Santa Clara River. Based on our review of the aerial photographs, analysis of the submitted drawings and several site visits, I have determined that many of the requested sections of the Santa Clara River are not engineered flood control channels as defined by Nationwide Permit No. 31 (Table 2). However, these reaches do contain other legitimate flood control facilities which would qualify for maintenance under Nationwide Permit No. 31. As a result, the only existing flood control structures in these sections of the Santa Clara River include levees and concrete outfall structures. Based on the above, I have authorized 20-foot-wide maintenance corridors immediately adjacent to existing levees and outfall structures in the Santa Clara River (Table 2). If vegetation and sediment removal activities are required outside of the 20-foot-wide maintenance corridors, Nationwide Permit No. 31 would not apply and we would have to process an individual permit or other type of nationwide permit to authorize the additional maintenance activities.

As long as you comply with the attached nationwide permit terms and conditions (including the special conditions noted below), an individual permit is not required. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time. Presently, all nationwide permits are scheduled to expire on February 11, 2002 except nationwide permit 26 which will expire on December 13, 1998. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice announcing the changes when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of the nationwide permit.

Furthermore, you must comply with the following Special Conditions:

1. Removal of vegetation shall be limited to the period outside of the migratory bird breeding season (March 15 - September 15) of any year.
2. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Permittee shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and, following such notification, shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
3. No activity is authorized which may adversely affect properties listed, or eligible for listing, on the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. The Permittee must notify the District Engineer if the authorized activity may

affect any historic properties listed, determined to be eligible, or which the Permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and, following such notification, shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

4. If sufficient new information, which exists now but is currently not in our possession, becomes available in the future, the Corps of Engineers does have the authority to modify this permit decision (e.g., the maintenance baseline determination for a particular reach) if the information so warrants.

5. To the maximum extent practicable, native riparian vegetation, mulefat scrub, alluvial scrub and emergent marsh habitat should be avoided. Reaches (or portions thereof) which are avoided (i.e., not cleared) will not be added to the impact acreage for purposes of establishing the after-the-fact compensatory mitigation requirements. Similarly, reaches where impacts are minimized through clearing implemented in an environmentally responsible manner (selective clearing of only the larger trees, phased removal of vegetation, etc) would result in reduced impacts thereby reducing the necessary after-the-fact mitigation ratio.

6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

7. The Permittee shall not stock pile any vegetative material within 50 feet of flowing water for greater than one week during the flood season.

8. The Permittee shall ensure that all vehicle maintenance, staging, storage, and dispensing of fuel occurs in designated upland areas. The Permittee shall ensure that these designated upland areas are located in such a manner as to prevent any runoff from entering waters of the U.S.

9. Permittee shall document the existing vegetation within 200 acres of the flood control channels (Table 1) by providing the following information (reach by reach) prior to conducting any maintenance clearing activities as follows:

- a. Location and boundaries of the project site (actual reach areas to be cleared).
- b. Longitude and latitude coordinates of the project boundaries (or UTM coordinates).
- c. Location map of the proposed work area with the reach to be cleared delineated.
- d. Quantity of material to be excavated (cubic yards of sediment and acres of vegetation cleared by vegetation type).
- e. Location of disposal site.
- f. Pre-clearing colored photographs of the project site taken every 300 feet within the channel which clearly shows the vegetation types. Photographs shall be taken from permanent points established along each reach (<300 feet apart). Permanent photo points shall be used to document the vegetation avoided within each reach. Videotaping of the vegetation within the channel length

is preferred and may be substituted for colored photographs documenting the vegetation.

Videotaping of the vegetation shall be conducted along the entire reach of the channel.

g. Certificate of accuracy. Photographs or videotapes for each reach of the channel shall be accompanied by a signed certificate (signed by Los Angeles County Department of Public Works official representative) certifying that the photographs and/or videotapes are true and accurate representation of the entire reach for which the work is planned.

10. Mitigation for impacts to waters of the United States shall be as follows:

- a. There shall be no mitigation required for maintenance clearing activities within the 681.3 acres of flood control channels which are:
  - i) unvegetated,
  - ii) vegetated with > 80% non-native invasive plant species such as giant reed, salt cedar, tree tobacco, castor bean, star thistle, artichoke thistle, thistle, pampas grass, fountain grass, or cocklebur,
  - iii) areas avoided (i.e., left uncleared), or
  - iv) reaches with total area less than 1 acre.
- b. The compensatory mitigation for impacts caused by clearing channels containing native vegetation (up to 200 acres) (i.e., woody riparian, alluvial scrub, mulefat, and emergent marsh habitat) shall be accomplished by creating, restoring, and/or enhancing similar habitat types (in roughly the same relative abundances). Use of mitigation banks or in-lieu fee arrangements may be considered if appropriate. The amount of acreage to be incorporated into the compensatory mitigation package shall be determined by the Corps according to the schedule identified in condition 11 below. The mitigation ratio shall be no less than 1:1 (one acre of compensatory mitigation for each acre of native vegetation cleared) and no more than 3:1\*. The following criteria shall be used in determining the exact mitigation ratio:
  - i) Location of mitigation site(s) in relation to impact sites. Proximity of mitigation site to the primary impact areas (e.g., same watershed or sub watersheds) would tend to reduce the ratio.
  - ii) Habitat value of the resource impacted. Impacts to high quality mature woody riparian vegetation would require higher ratios than areas lacking structural diversity or otherwise characterized by degraded habitat values.
  - iii) Overall quality of the mitigation plan in such terms as possessing a natural source of hydrology, a natural disturbance regime, proper soils, provisions for long term control of exotic species (e.g., giant reed, cowbirds), etc.
  - iv) The extent to which the proposed maintenance clearing plans are modified to incorporate on-site avoidance and minimization of impacts. Measures such as rotating cleared swaths, or selective clearing of only

- larger trees reduce the magnitude of project impacts and would result in lower mitigation ratios.
- v) Timing of implementation of mitigation. Delay in implementing the compensatory mitigation plan would increase temporal impacts and result in increased mitigation ratios.

\*The above mitigation ratios assumes absence of endangered species in the impact sites.

11. The mandatory schedule for developing and implementing the compensatory mitigation shall be as follows:

- |    |                  |   |
|----|------------------|---|
| a. | December 2, 1997 | Interagency meeting to provide direction and guidance on preparation and development of the mitigation plan.  |
| b. | June 1, 1998     | Draft mitigation plan due. The draft plan shall be flexible in terms of acreage so as to allow the Corps to establish the final mitigation ratio. Plan shall include an implementation schedule, success criteria, and contingency provisions. Copies of the draft plan will be provide by the County to the Corps (2 copies), FWS Ventura, FWS Carlsbad, EPA, CDFG, NMFS, and RWQCB. |
| c. | June 21, 1998    | Resource agency comments on the draft plan due to the Corps.  |
| d. | July 1, 1998     | End of 30 day review period of the mitigation plan. Corps comments due to the County. Corps establishes final mitigation ratio no less than 1:1 and no more than 3:1.   |
| e. | August 1, 1998   | Final mitigation plan due. Copies to all agencies as in 2.a. above.   |
| f. | August 15, 1998  | Corps concurrence of implementation of the mitigation plan.   |

Permittee should generally follow the procedure outlined in the Proposed Riparian Habitat Mitigation and Monitoring Guidelines for preparation of the mitigation plan.

12. The Permittee shall implement the mitigation plan according to the implementation schedule upon Corps approval of the mitigation plan.

13. The Permittee shall submit annual compliance reports, complete with photographs (from the established fixed points), to the Corps of Engineers. The compliance report shall document the extent of the maintenance activities during that year and certification that the Permittee has implemented the above special conditions in full.

Please note that my decisions on maintenance baselines and required compensatory mitigation are one-time decisions that will remain valid for subsequent utilization of this nationwide permit (i.e., clearing in future years) as well as subsequent reissuance of Nationwide Permit 31 by my headquarters office (done every 5 years). However, if any reaches are effectively abandoned or reduced due to lack of proper maintenance, a new determination of a maintenance baseline would be required. In addition, if sufficient new information, which exists now but is currently not in our possession, becomes available in the future, I do have the authority to modify this permit decision (e.g., the maintenance baseline determination for a particular reach) if that information so warrants.

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

I want to emphasize that I will consider initiation of any discharges of dredged or fill material under the auspices of this permit decision to be tantamount to your full agreement and commitment, on behalf of the County of Los Angeles, to comply with the terms and conditions of this authorization. Failure to comply with the permit terms and conditions could result in either suspension and/or revocation of the permit (or portions thereof), pursuit of administrative penalties, or referral to the United States Department of Justice for enforcement.

Thank you for participating in our regulatory program. If you have any questions, please contact Aaron Allen of my Regulatory Branch staff at (213) 452-3413.

Sincerely,

A handwritten signature in black ink, appearing to read "R. L. Davis", is written over a light pink rectangular background.

Robert L. Davis  
Colonel, Corps of Engineers  
District Engineer

Enclosure

*LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS*

**CERTIFICATION OF COMPLIANCE WITH  
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

**Permit Number:** 98-00027-AOA to 98-00123-AOA

**Name of Permittee:** *Los Angeles County - Department of Public Works*

**Date of Issuance:** *October 24, 1997*

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S Army Corps of Engineers  
Regulatory Branch  
ATTN: CESPL-CO-R-98-00027-AOA  
P.O BOX 532711  
Los Angeles, CA 90053-2325

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this nationwide permit you may be subject to permit suspension, modification, or revocation procedures as contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date